TENNESSEE
COMPTROLLER
OF THE TREASURY

JUSTIN P. WILSON
Comptroller

JASON E. MUMPOWER
Deputy Comptroller

October 15, 2019

Mr. Dwight Hoover
1199 Street Road
Kingston Springs, TN 37082-9242

Dear Mr. Hoover:

Enclosed are the printed versions of the records you requested as well as a flash drive with electronic copies of the records.

The difference between what you paid ($528.40) and the final amount due ($536.10) is below our threshold amount and is waived. The final invoice is as follows:

Labor	Rate	Hours			
	$32.05		5.25	$168.26	
	$68.00		3.3	$224.40	
	$75.00		2.5	$187.50	
		SUB		$580.16	
			($75.00)		$505.16
Copies	$0.15	Pages (including redaction)		42	$6.30
Flash drive	$15.00		1		$15.00
Postage	Est				$4.39
Mailing Supplies	$5.25	2 padded envelops			$5.25
					$536.10

Sincerely,

Ann V Butterworth

Ann V. Butterworth
Public Records Request Coordinator

From: John Dunn
To: Erik Schelzig
Subject: Re: Cost of sex week study?
Date: Wednesday, February 27, 2019 7:01:51 PM

Here are the costs that we have confirmed:
Report Printing expense: $6,716.46
Travel to Knoxville for Research: $802.43
The number of work hours associated with this report is more difficult for us to ascertain. This report was one of approximately 19 reports that has been researched by our Office of Research and Education Accountability (OREA) over the past year. OREA has a dedicated staff of 11 people that work full-time on these reports. It is impossible for us to track the number of hours dedicated to this project.
John Dunn

Get Outlook for iOS

From: Erik Schelzig <eschelzig@blr.com>
Sent: Wednesday, February 27, 2019 6:57 PM
To: John Dunn
Subject: Cost of sex week study?

John,
Did you ever get back to Sen. Dickerson on what it cost to put together the 269-page Sex Week study?
Thanks,
Erik

Sent from my iPhone

From: Adam Kleinheider [mailto:adam.kleinheider@capitol.tn.gov]
Sent: Tuesday, April 10, 2018 10:10 AM
To: Jason Mumpower <Jason.Mumpower@cot.tn.gov>
Subject: FW: Lt. Governor McNally request regarding UT's Sex Week

FYI. I got your email wrong on the first pass. Apologies.

From: Adam Kleinheider
Sent: Tuesday, April 10, 2018 10:08 AM
To: 'Justin.Wilson@cot.tn.gov'
Cc: Randy McNally; 'Jason.mumpower@tn.gov'; Rick Nicholson
Subject: Lt. Governor McNally request regarding UT's Sex Week

Mr. Comptroller:

Lt. Governor McNally would like to request the Office of the Comptroller look into the use of state resources, direct or indirect, used in promotion of the University of Tennessee's Sex Week. While the production of the events no longer use state funds, they are held in state buildings. Lt. Governor McNally would like an assessment of any way state dollars are used in promotion of the week.

Thank you for your attention to this matter.

ADAM C. KLEINHEIDER | Communications Director
Office of Lt. Governor Randy McNally
m: 615.696.9225 o: 615.741.1100 ext.45127
adam.kleinheider@capitol.tn.gov

Lauren Spires

From: Chase Johnson <chase.johnson@capitol.tn.gov>
Sent: Tuesday, October 30, 2018 9:08 AM
To: Lauren Spires
Cc: Sue Lusk
Subject: RE: Requesting info//March 2014 email
Attachments: [redacted]

Follow Up Flag: Follow up
Flag Status: Flagged

Lauren,

Attached is a copy of the email.

Chase

From: Lauren Spires [mailto:Lauren.Spires@cot.tn.gov]
Sent: Tuesday, October 30, 2018 8:16 AM
To: Sue Lusk; Chase Johnson
Cc: Russell Moore
Subject: Requesting info//March 2014 email

Sue and Chase,

I hope this email finds you both well. I am working on a comprehensive report on Sex Week at UTK and have watched archived video from the March 13, 2014 Senate Floor Session (this is when SJR626, the resolution directing the UT Board of Trustees to allow students to opt in or out of where a portion of their student activity fee goes, was discussed and passed). During floor discussion on SJR626, Senator Bell read aloud an email he received from a constituent (a parent of a UT student) that mentions students walking around on campus in genitalia costumes and a teacher decorating their classroom with condoms in honor of the week. During his testimony, Senator Bell said that he received this email just before presenting SJR626 in the Senate Education Committee. The resolution was presented in that committee on 3/5/2014, so I assume the email would have been received on that date.

Do you still have access to this email? If so, may I have a copy?

Thanks so much.

Lauren Spires
Legislative Research Analyst
Tennessee Comptroller of the Treasury
Office of Research and Education Accountability
Cordell Hull Building, 4th floor
425 Fifth Avenue North
Nashville, TN 37243-3400
Office: 615-747-5345
Lauren.Spires@cot.tn.gov

Chase Johnson

From: [redacted]
Sent: Wednesday, March 05, 2014 1:40 PM
To: Jimmy Matlock; Mike Bell
Subject: UT Sex Week

Why have you not taken funding away from UT? Why are my daughter's student fees soo high?
I have a daughter who is a freshman at UT this year. She has avoided all of the sex week events that you have to attend but can not avoid walking across campus to classes. Are you aware that the organizers of this awfull event have people in a giant penis costume and a giant vagina costume attacking students as they walk on campus? My daughter's teacher assistant for one of her classes outlined the question board for his class with condoms to "celebrate" the week.
Why am I paying student fees for this and why does my daughter who chooses not to participate have to put up with being assaulted by these costumed perverts? Why are paid staff decorating their rooms with condoms?
Who speaks for the people of TN who pay taxes to support these universities?
Who protects the rights of the majority of the sttudents who do not want their fees used for this type of thing?
You know, someone has become so open minded here that their brain fell out!

[redacted]

Lauren Spires

From: Nicole Ussery <nicole.ussery@capitol.tn.gov>
Sent: Thursday, May 24, 2018 9:08 AM
To: Lauren Spires
Subject: RE: Request for letter

Follow Up Flag: Follow up
Flag Status: Flagged

My pleasure! Rep. Van Huss will be very interested in what you learn and has instructed me to provide you with any and all assistance. He has been trying to do something about Sex Week for at least the 4 years. Perhaps your research will finally give him the insight he needs to get it dealt with effectively.

Have a great holiday weekend.

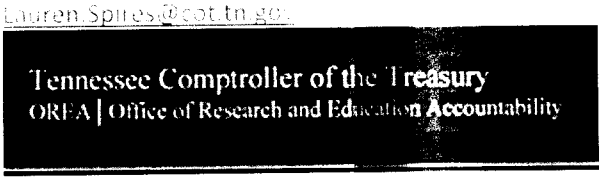
Nicole

From: Lauren Spires [mailto:Lauren.Spires@cot.tn.gov]
Sent: Thursday, May 24, 2018 7:48 AM
To: Nicole Ussery
Subject: RE: Request for letter

Nicole,

Thank you so much for your quick response!

Lauren Spires
Legislative Research Analyst
Tennessee Comptroller of the Treasury
Office of Research and Education Accountability
Cordell Hull Building, 4th floor
425 Fifth Avenue North
Nashville, TN 37243-3400
Office: 615-747-5345
Lauren.Spires@cot.tn.gov



From: Nicole Ussery <nicole.ussery@capitol.tn.gov>
Sent: Wednesday, May 23, 2018 3:48 PM
To: Lauren Spires <Lauren.Spires@cot.tn.gov>
Subject: RE: Request for letter

Hey, Lauren

I am glad to know that you are going to be looking into Sex Week. I am sorry I missed Josh. I was upstairs at the going away party for Jan Kirk Wright.

The letter is attached. If you need anything further, please let me know.

Nicole A. Ussery
Legislative Assistant to Rep. Micah Van Huss
425 5th Avenue North, Suite 430
Nashville, TN 37243
Office Phone: 615-741-1717
Office Fax: 615-253-0301

From: Lauren Spires [mailto:Lauren.Spires@cot.tn.gov]
Sent: Wednesday, May 23, 2018 2:20 PM
To: Nicole Ussery
Cc: Russell Moore; Joshua Testa
Subject: Request for letter

Hi Nicole,

I hope you are doing well! My colleague Josh and I just stopped by your office, but saw you were out, so I am following up with an email.

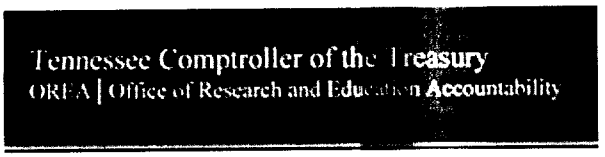
Members of the legislature have asked that our office research UT Sex Week. It is our understanding that Rep. Van Huss sent a letter with regards to UT Sex Week to Dr. DiPietro on 4/24/18, to which UT's General Counsel replied with a letter dated 5/15/18.

For the purpose of our research into this topic, is it possible for us to have a copy of the letter Rep. Van Huss sent to Dr. DiPietro on 4/24?

Thank you so very much for your assistance in this matter.

Sincerely,

Lauren Spires
Legislative Research Analyst
Tennessee Comptroller of the Treasury
Office of Research and Education Accountability
Cordell Hull Building, 4th floor
425 Fifth Avenue North
Nashville, TN 37243-3400
Office: 615-747-5345
Lauren.Spires@cot.tn.gov



Mission: To make government work better.

MICAH VAN HUSS
6th House District
Washington County

Phone: (615) 741-1717
Fax: (615) 253-0301

rep.micah.vanhuss@capitol.tn.gov

HOUSE OF REPRESENTATIVES

MAJORITY FLOOR LEADER

COMMITTEES:

CRIMINAL JUSTICE SUBCOMMITTEE
CRIMINAL JUSTICE COMMITTEE
INSURANCE & BANKING COMMITTEE

April 24, 2018

Dr. Joe DiPietro, President
University of Tennessee
800 Andy Holt Tower
1331 Circle Park
Knoxville, Tennessee 37996

Dear President DiPietro:

In 2016, the General Assembly passed a law to prevent state funds from being used to fund or support "Sex Week" at the University of Tennessee. The codified version follows:

> **9-4-5119. Prohibited use of state funds by University of Tennessee Use of funds in budget of office of diversity and inclusion.**
>
> *(a) State funds shall not be expended by the University of Tennessee to promote the use of gender neutral pronouns, to promote or inhibit the celebration of religious holidays, or to fund or support sex week.* [emphasis added]

In spite of this, the University of Tennessee allowed SEAT to use campus facilities for "Sex Week" again this year. This is a clear violation of this law, as well as its intent.

Through a spokesperson, the University has stated that Sex Week is protected by the First Amendment and the Campus Free Speech Protection Act (TCA 49-7-2401-2405). We fully support the Freedom of Speech. The Supreme Court has said that there are limits on what constitutes free speech. Your own policy, "Use of University Property by Non-Affiliated Persons for Free Expression Activities", sets up time, place, and manner restrictions that specifically state that a non-affiliated person using University property shall not "violate a federal, state, or local law, rule, regulation, or ordinance" or "engage in speech that is obscene". According to the Tennessee Code Annotated:

> Obscene means:
>
> **(A)** The average person applying contemporary community standards would find that the work, taken as a whole, appeals to the prurient interest;
>
> **(B)** The average person applying contemporary community standards would find that the work depicts or describes, in a patently offensive way, sexual conduct; and;
>
> **(C)** The work, taken as a whole, lacks serious literary, artistic, political, or scientific value

Looking at the event names and descriptions for Sex Week posted on SEAT's website, it is readily apparent that the content meets this standard.

Given this, we, the undersigned, would like for you and Chancellor Davenport to each provide us with your thoughts on the following:

- Should Sex Week be held off campus?
- Does Sex Week promote a "hook-up" culture that is damaging to individuals and society as a whole?
- Should the University prevent the use of UT or any other reference to the University in the title of this event in order to make clear that it is not affiliated with the University of Tennessee?

We look forward to your reply.

Respectfully,

Representative Tilman Goins
House District 10

Representative Dennis H. Powers
House District 36

Representative Bud Hulsey
House District 2

Representative Kevin Vaughn
House District 95

Representative Judd Matheny
House District 47

Senator Mark Pody
Senate District 17

Representative Brian Terry
House District 48

Representative Terri Lynn Weaver
House District 40

Representative Mike Sparks
House District 49

Senator Janice Bowling
Senate District 16

Representative Bill Dunn
House District 16

Representative Dale Carr
House District 12

Senator Shane Reeves
Senate District 14

Representative Jimmy Eldridge
House District 73

Representative Jay Reedy
House District 74

Representative John Crawford
House District 1

Representative Dawn White
House District 37

Representative Debra Moody
House District 81

Representative Sam Whitson
House District 65

Representative Rick Tillis
House District 92

Senator Paul Bailey
Senate District 15

Representative Curtis Halford
House District 79

Representative Courtney Rogers
House District 45

Representative Susan Lynn
House District 57

Representative John Ragan
House District 33

Representative Mary Littleton
House District 78

Representative Sheila Butt
House District 64

Representative Jimmy Matlock
House District 21

Representative David Alexander
House District 39

Representative Matthew Hill
House District 7

Representative Paul Sherrell
House District 43

Representative David Hawk
House District 5

CC: Chancellor Beverly J. Davenport

Lauren Spires

From: Sarah Adair <sarah.adair@capitol.tn.gov>
Sent: Monday, July 2, 2018 11:32 AM
To: Lauren Spires
Cc: Joshua Testa; Russell Moore
Subject: RE: AG response to UTK Sex Week opinion request
Attachments: Message from "RNP002673BFC2D9"

Follow Up Flag: Follow up
Flag Status: Flagged

Sorry Lauren, I was out last week. A ed is a scan of the request made by Sen. Briggs and the response received from the AG.
Hope this helps,
Sarah

From: Lauren Spires [mailto:Lauren.Spires@cot.tn.gov]
Sent: Thursday, June 28, 2018 1:43 PM
To: Sarah Adair
Cc: Joshua Testa; Russell Moore
Subject: AG response to UTK Sex Week opinion request

Hi Sarah,

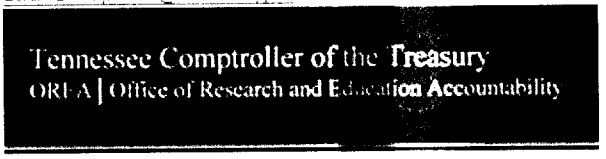
I hope you are doing well and having a nice summer so far! The Comptroller's Office of Research and Education Accountability (OREA) has been asked to research UTK Sex Week. My colleague, Josh Testa, and myself have been assigned to the project.

It is our understanding that Senator Briggs submitted the attached opinion request relating to Sex Week to the Attorney General. It is also our understanding that the opinion request was denied. For the purposes of our research, is it possible to obtain a copy of the AG's denial letter/memo?

Please let us know if you have any questions about this request.

Thank you!

Lauren Spires
Legislative Research Analyst
Tennessee Comptroller of the Treasury
Office of Research and Education Accountability
Cordell Hull Building, 4th floor
425 Fifth Avenue North
Nashville, TN 37243-3400
Office: 615-747-5345
Lauren.Spires@cot.tn.gov



Mission: To make government work better.

Richard M. Briggs, MD
Senator

770 Cordell Hull Building
Nashville, Tennessee 37243
(615) 741-1766
(615) 253-0199 FAX

Toll Free: 1-800-449-8366 Ext. 11766
sen.richard.briggs@capitol.tn.gov

Senate Chamber
State of Tennessee

NASHVILLE

7th Senatorial District
Knox County

Committees

First Vice-Chair
State and Local Government

Health and Welfare

Chairman
Ethics

April 17, 2018

The Honorable Herbert H. Slatery III
Attorney General and Reporter
P.O. Box 20207
Nashville, TN 37202-0207

RE: Tennessee Code Annotated § 9-4-5119 – Sex Week

Dear General Slatery:

Pursuant to Tennessee Code Annotated § 8-6-109(b)(6), I am requesting a written legal opinion from the Office of the Attorney General concerning § 9-4-5119. I am making this request so that faculty and staff of The University of Tennessee can understand how to conform their conduct to subsection (a) concerning "Sex Week."

The factual background for my request is as follows:

- For the past six years, a registered student organization at the University, Sexual Empowerment and Awareness at Tennessee (SEAT), has organized and conducted a week-long event called "Sex Week" on the campus of the University of Tennessee, Knoxville (UTK). Sex Week activities have occurred in UTK buildings and in outdoor areas of the UTK campus that were open to use by any University registered student organization for free speech activities. SEAT has received funding for Sex Week from funds derived from the University's student activity fee or from funds donated to the University by private persons or entities. The University has not funded Sex Week activities with funds derived from state tax dollars or tuition dollars. Therefore, Sex Week activities have received no funding from any University source.

- On February 24, 2014, the Tennessee House of Representatives adopted House Joint Resolution 661, which addressed Sex Week at UTK and by which the House "condemn[ed] the administration of the University of Tennessee and expresses its displeasure with the University for permitting 'Sex Week' to be held on the UT-Knoxville campus for a second consecutive year." The Senate did not adopt House Joint Resolution 661.

- On March 13, 2014, the Tennessee Senate adopted Senate Joint Resolution 626, which "directed" The University of Tennessee Board of Trustees "to work with the administration of the University of Tennessee to implement a way in which each person responsible for paying the student activity fee may opt in to the allocation of fees to student organizations for student programming." The House did not adopt Senate Joint Resolution 626.

- On June 19, 2014, in response to Senate Joint Resolution 626, The University of Tennessee Board of Trustees adopted a policy that gave every student the right to "opt-in" to the use of his/her student activity fee funds for student-organized programming such as Sex Week. Since the adoption of that policy, if a student fails, for any reason, to expressly authorize the University to allocate a certain amount or percentage of the student-activity for student-organized programming such as Sex Week, then that amount or percentage of the student's student activity fee is allocated by the University for another use that benefits students.

- Using Education and General funds appropriated by the General Assembly (which include funds derived from state tax dollars), the University maintains information technology resources (e.g., internet sites, networks, e-mail systems) used by employees, students, and registered student organizations. The University permits incidental or casual personal use of those resources.

- Prior to the vote on the Conference Committee Report on House Bill No. 2248/Senate Bill No. 1912, the following discussion occurred on the floor of the House of Representatives:

  Rep. Tilman Goins: "Thank you madam speaker and thank you sponsor for the bill and for the conference committee and what you bring back...um...so I was reading through the bill here and this is something very very important for my colleagues to know and to realize, you know a couple of years ago when sex week started at the University of Tennessee there was an uproar and we passed a Resolution. The University of Tennessee came back and told us they weren't funding sex week. Now we know that not to be true because sex week is still held on the university of Tennessee campus, they said that their classrooms and everything else wasn't considered funding even though I do very much consider an electric bill and a water bill for an activity that we don't approve of, a funding source. Your bill says that they shall not fund or support sex week. Which is a very important clarifying factor for my colleagues to understand...um...if somebody came to me and they were, they were hungry and needing shelter and needed to get out of the heat, if I provide air conditioning for them I'm supporting them. My question for you then would be is: Can you define support in your bill for us?"

Rep. Micah Van Huss: "Absolutely, when the bill says we will not fund or support sex week. the intent is obviously funds, but for the support I would add buildings built with state funds, buildings remodeled with state funds."

Rep. Goins: "Thank you, in other words, if sex week were held on the campus or even in a classroom of that campus, that would be considered support and illegal under this act."

Rep. Van Huss: "Yes sir."

Rep. Goins: "Thank you for this bill, I can't wait to vote for it."

Based on those facts, I am requesting a written legal opinion on the following questions:

1. Is Tennessee Code Annotated § 9-4-5119(a) constitutional on its face under the First Amendment to the United States Constitution and Article I, Section 19 of the Tennessee Constitution?

2. Would any of the following scenarios violate the provision of Tennessee Code Annotated § 9-4-5119(a) concerning the expenditure of state funds to fund or support Sex Week?

   - Ten registered student organizations apply for funding for events they are organizing and will conduct in campus buildings or using campus outdoor spaces. The University provides funds derived from student activity fees to all ten registered student organizations for those events. One of the organizations receiving funding is SEAT, and SEAT uses the student activity fee funds for Sex Week events.

   - An auditorium in a particular building on campus is available for reservation by any registered student organization for organizational events. SEAT does not receive any direct funding for Sex Week events from the University from any funding source. However, the University allows SEAT to use the building for a Sex Week event, and the University pays for the costs of all utilities in the building that are used during the time that the Sex Week event takes place. Utilities costs are paid for using Education and General funds appropriated by the General Assembly (which include funds derived from state tax dollars).

- An outdoor green space is available for reservation by any registered student organization for organizational events. SEAT does not receive any direct funding for Sex Week events from the University from any funding source. However, the University allows SEAT to use the outdoor green space for a Sex Week event. Prior to the day of the Sex Week event, as part of regularly scheduled maintenance, University employees mowed the grass on the green space on which the Sex Week event occurred. The employees used equipment purchased with, and are compensated from, Education and General funds appropriated by the General Assembly (which include funds derived from state tax dollars).

- Using Education and General funds appropriated by the General Assembly (which include funds derived from state tax dollars), the University maintains a website that contains a campus event calendar. The event calendar lists a variety of campus activities including student activities that have not been organized or funded by the University. Any student or employee may log-in to the website and post an event to the calendar. The University allows SEAT to list Sex Week on the campus event calendar.

- The purpose of SEAT, as stated in the organization's constitution, is to organize and present Sex Week each year at UTK. SEAT complies with all steps required for being a registered student organization. The University continues to allow SEAT to be a registered student organization and to receive all of the benefits of being a registered student organization. Such benefits include the privilege of renting space in University buildings and borrowing laptop computers, tables, and tents.

- Using a University-provided e-mail account and a University network, SEAT sends an e-mail to all students advertising Sex Week events.

- A 98-ton chunk of Knox dolomite known as "The Rock" serves as an outdoor, designated public forum on the UTK campus. SEAT paints a message on "The Rock" that advertises Sex Week. University employees are paid to maintain the grounds surrounding "The Rock."

- A University faculty member serves as an advisor to SEAT while being paid by the University.

- A University faculty member serves as a panelist for a Sex Week program while being paid by the University.

3. If your response to Question #2 is "yes" for any of the scenarios, is Tennessee Code Annotated § 9-4-5119(a) constitutional as applied to that scenario?

4. If Tennessee Code Annotated § 9-4-5119(a) is unconstitutional on its face or as applied, are University employees who are responsible for controlling the expenditure of state funds bound to enforce Tennessee Code Annotated § 9-4-5119(a)?

5. If University employees are sued in their individual capacities for enforcing Tennessee Code Annotated § 9-4-5119(a), will the State of Tennessee provide defense counsel to those University employees and reimburse them for judgments if they are found not to have qualified immunity?

Given the intense legislative scrutiny of The University of Tennessee concerning Sex Week, I would appreciate your prompt attention to this request.

Sincerely,

Richard M. Briggs, M.D.

7th SENATORIAL DISTRICT
KNOX COUNTY

STATE OF TENNESSEE

Office of the Attorney General

HERBERT H. SLATERY III
ATTORNEY GENERAL AND REPORTER

P.O. BOX 20207, NASHVILLE, TN 37202
TELEPHONE (615)741-3491
FACSIMILE (615)741-2009

April 26, 2018

The Honorable Richard M. Briggs, M.D.
State Senator
770 Cordell Hull Building
Nashville, Tennessee 37243

Re: Opinion Request Regarding University of Tennessee Sex Week

Dear Senator Briggs:

This Office has received and carefully considered your April 17, 2018, letter requesting an expedited opinion regarding Tenn. Code Ann. § 9-4-5119(a) as it applies to the "sex week" event that has been organized and conducted by a student organization for the past six years on the campus of the University of Tennessee, Knoxville. Your letter explains that the purpose of the opinion would be to provide legal advice to the faculty and staff of UTK about their obligations under the statute with regard to sex week. The request seeks opinions (1) as to whether any one of nine "scenarios" would violate that statute, (2) whether the statute is constitutional on its face, (3) whether the statute is constitutional as applied to each of the nine scenarios, (4) what the enforcement responsibilities of the UTK faculty and staff are if the statute is unconstitutional, and (5) whether the State will defend and indemnify any UTK employees who may be liable for enforcing the statute.

We regret that, for several important reasons, we are not able to provide the requested opinion. First, we believe that our legal advice or guidance to or for the benefit of UTK will be much more effective when we provide it directly to UTK because those communications are subject to the attorney/client privilege. Since all Attorney General opinions are available to the public at large, we forgo that privilege when we put that advice in the form of an Attorney General opinion. Second, to avoid intruding inappropriately into the administrative or judicial process, this Office has a longstanding policy of not opining on questions concerning matters or issues pending before administrative or judicial bodies or matters involving potential or threatened litigation. In particular, this Office cannot issue opinions related to litigation in which it is or may become involved. Thus, we may not opine on the questions you have posed because those questions directly implicate issues that could become the subject of litigation, as indeed at least one of the questions itself assumes. Moreover, this Office may be called upon to become involved in any

such litigation. We may, for example, be required to defend the constitutionality of the statute. Third, in most all instances, answers to the scenario-related questions would be contingent on facts and circumstances that are not included in the request and could vary depending on the particular facts and circumstances. Fourth, answers to the defense-and-indemnification questions, similarly, would depend on the particular facts and circumstances of each individual case.

I am sorry that we are unable to respond to this request but trust that you understand our position. We look forward to working with you in the future.

Sincerely,

Andrée Blumstein

ANDRÉE SOPHIA BLUMSTEIN
Solicitor General

cc: Herbert H. Slatery III, Attorney General and Reporter

Lauren Spires

From: Marilyn Villalobos <marilyn.villalobos@ncsl.org>
Sent: Tuesday, November 6, 2018 3:42 PM
To: Lauren Spires
Subject: RE: TN Comptroller's Office - Info request regarding higher ed policies
Attachments: Board of Regents of University of Wisconsin System v Southworth.pdf

Hello Lauren,

Thank you for reaching out to NCSL with your request about Sex Week hosted at University of Tennessee.

Please review the resources in the table below, and let us know if you have any follow-up questions, or additional requests.

You asked:
1. Information that is Sex Week specific. In TN, the legislature has passed several laws and resolutions directly aimed at Sex Week. For example, in 2014, there was a house resolution passed that condemned the organizers of the event. In 2016, PC1066 was passed that prohibits the university from using state funds to promote or support the event. Have any other state legislatures passed legislation in response to a Sex Week that occurs at a public institution in their state? 2. Information about public university policies on Sex Week or sex-related programing. Do any public universities have a policy in place to prohibit student organizations from hosting sex-related programming? Do any public universities say "we will be the sole-provider of sex-related programming on campus"?
1. To the best of our knowledge no other schools have passed legislation preventing the expenditure of public funds on sex weeks. In 2014, South Carolina legislators cut the annual budgets of the College of Charleston and the University of South Carolina Upstate because of the institution's content on sexuality in its orientation program. I found an article on thefire.org website. The controversy was also covered in [illegible]. That said, I am unfamiliar with any state legislatures regulating student activities related to sex week. 2. As to your second question we are unware of any public universities that have a policy in place to prohibit student organizations from hosting sex-related programming. To the best of our knowledge, no public universities say "we will be the sole-provider of sex-related programming on campus." In Board of Regents of the University of Wisconsin System v. Southworth (see PDF attached), the U.S. Supreme Court held that student activity fees have to be distributed on viewpoint neutral basis, and that because the funds were student funds not government funds, the expressive activity funded could not be considered the government's own speech.

Best,
Marilyn Villalobos
Research Analyst II, Education Program
National Conference of State Legislatures
7700 E. First Place, Denver, CO 80230
303-856-1548
www.ncsl.org

Strong States, Strong Nation

From: Marilyn Villalobos
Sent: Friday, October 26, 2018 4:15 PM
To: 'Lauren Spires' <Lauren.Spires@cot.tn.gov>
Subject: RE: TN Comptroller's Office - Info request regarding higher ed policies

Hi Lauren,

I should be able to complete your request by the end of next week (hopefully sooner). In the meantime, don't hesitate to reach out with any other questions.

Best,
Marilyn Villalobos
Research Analyst II, Education Program
National Conference of State Legislatures
7700 E. First Place, Denver, CO 80230
303-856-1548
www.ncsl.org
Strong States, Strong Nation

From: Lauren Spires <Lauren.Spires@cot.tn.gov>
Sent: Thursday, October 25, 2018 5:54 PM
To: Marilyn Villalobos <marilyn.villalobos@ncsl.org>
Subject: Re: TN Comptroller's Office - Info request regarding higher ed policies

Hi Marilyn,

Thanks so much for getting back to me. The sooner the better, but I understand this request may take some time. Is it feasible to get some information back within 2 weeks? If not, what's the soonest you could have something to me? I would rather have more thorough information even if that means it takes a little longer on your end.

Thanks!
Lauren

Get Outlook for iOS

From: Marilyn Villalobos <marilyn.villalobos@ncsl.org>
Sent: Thursday, October 25, 2018 4:28:59 PM
To: Lauren Spires
Subject: RE: TN Comptroller's Office - Info request regarding higher ed policies

Hello Laura,

Thank you for reaching out to NCSL. My name is Marilyn Villalobos and I am a Research Analyst here at NCSL. I cover topics on Higher Education. I'm currently looking into your request. Do you have a specific deadline?

I look forward to working with you. Please don't hesitate to ask any further questions.

Best,
Marilyn Villalobos
Research Analyst II, Education Program

National Conference of State Legislatures
7700 E. First Place, Denver, CO 80230
303-856-1548
www.ncsl.org
Strong States, Strong Nation

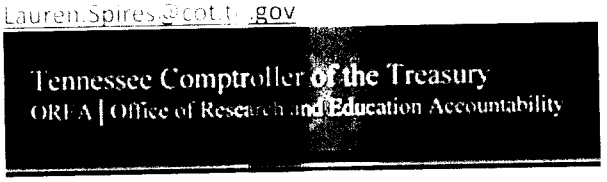
From: Lauren Spires <lauren @cot.tn.gov>
Sent: Wednesday, October 24, 2018 5:46 AM
To: Angela Andrews
Subject: TN Comptroller's Office - Info request regarding higher ed policies

Hi Angela,
My name is Lauren Spires and I am a legislative research analyst in the Tennessee Comptroller's Office of Research And Education Accountability.
I am conducting research regarding the Sex Week that is hosted at the University of Tennessee, Knoxville campus annually. (In case you're unfamiliar, Sex Week is a week-long event of sex-related programming. It focuses on sexual health, sex positivity, inclusivity, etc. At UTK it's hosted by a registered student organization and has received a lot of negative reactions from the legislature. At other universities it may be hosted by the university itself – in this case it seems to be more tame). In conducting this research, I'm trying to get information on other public universities and legislative reactions outside of Tennessee. The information I'm seeking is twofold:

1. Information that is Sex Week specific. In TN, the legislature has passed several laws and resolutions directly aimed at Sex Week. For example, in 2014, there was a house resolution passed that condemned the organizers of the event. In 2016, PC1066 was passed that prohibits the university from using state funds to promote or support the event. Have any other state legislatures passed legislation in response to a Sex Week that occurs at a public institution in their state?
2. Information about public university policies on Sex Week or sex-related programing. Do any public universities have a policy in place to prohibit student organizations from hosting sex-related programming? Do any public universities say "we will be the sole-provider of sex-related programming on campus"? If this isn't info NCSL has, do you know of any agencies that might be able to help me with this one?

Any info or guidance you can provide would be incredibly helpful.
Thank you!

Lauren Spires
Legislative Research Analyst
Tennessee Comptroller of the Treasury
Office of Research and Education Accountability
Cordell Hull Building, 4th floor
425 Fifth Avenue North
Nashville, TN 37243-3400
Office: 615-747-5345
Lauren.Spires@cot.tn.gov



distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify me by telephone at 615-747-5345 and permanently delete the message from your system.

Mission: To make government work better.

120 S.Ct. 1346
Supreme Court of the United States

BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN SYSTEM, Petitioner,
v.
Scott Harold SOUTHWORTH et al.

No. 98–1189.
|
Argued Nov. 9, 1999.
|
Decided March 22, 2000.

Synopsis
Students sued University of Wisconsin board of regents alleging that mandatory student activity fee violated their First Amendment rights of free speech, free association, and free exercise and that the university must grant them the choice not to fund organizations that engage in political and ideological expression offensive to their personal beliefs. The United States District Court for the Western District of Wisconsin declared the fee program invalid and enjoined the university from using the fees to fund any organization engaging in political or ideological speech. The United States Court of Appeals for the Seventh Circuit, 151 F.3d 717, affirmed in part, reversed in part, and vacated in part, holding that use of portion of fees to fund private organizations that engaged in political and ideological activities, speech, and advocacy violated free speech rights of objecting students, but that the injunctive relief ordered by district court was overbroad. On certiorari, the Supreme Court, Justice Kennedy, held that: (1) the First Amendment permits a public university to charge its students an activity fee used to fund a program to facilitate extracurricular student speech, provided allocation of funding support is viewpoint neutral; (2) the viewpoint neutrality requirement of the University of Wisconsin fee program was in general sufficient to protect the rights of the objecting students, but the student referendum aspect of the program appeared to be inconsistent with the viewpoint neutrality requirement, and a remand was required; (3) an optional or refund system is not a constitutional requirement; and (4) there is no distinction between campus activities and the off-campus expressive activities of funded organizations.

Reversed and remanded.

Justice Souter, with whom Justice Stevens and Justice Breyer joined, filed an opinion concurring in the judgment.

**1347 *Syllabus* *

* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 50 L.Ed. 499.

Petitioner, Board of Regents of the University of Wisconsin System (hereinafter University), requires students at the University's Madison campus to pay a segregated activity fee. The fee supports various campus services and extracurricular student activities. In the University's view, such fees enhance students' educational experience by promoting extracurricular activities, stimulating advocacy and debate on diverse points of view, enabling participation in campus administrative activity, and providing opportunities to develop social skills, all consistent with **1348 the University's broad educational mission. Registered student organizations (RSO's) engaging in a number of diverse expressive activities are eligible to receive a portion of the fees, which are administered by the student government subject to the University's approval. The parties have stipulated that the process for reviewing and approving RSO applications for funding is administered in a viewpoint-neutral fashion. RSO's may also obtain funding through a student referendum. Respondents, present and former Madison campus students, filed suit against the University, alleging, *inter alia*, that the fee violates their First Amendment rights, and that the University must grant them the choice not to fund RSO's that engage in political and ideological expression offensive to their personal beliefs. In granting respondents summary judgment, the Federal District Court

declared the fee program invalid under *Abood v. Detroit Bd. of Ed.*, 431 U.S. 209, 97 S.Ct. 1782, 52 L.Ed.2d 261, and *Keller v. State Bar of Cal.*, 496 U.S. 1, 110 S.Ct. 2228, 110 L.Ed.2d 1, and enjoined the University from using the fees to fund any RSO engaging in political or ideological speech. Agreeing with the District Court that this Court's compelled speech precedents control, the Seventh Circuit concluded that the program was not germane to the University's mission, did not further a vital University policy, and imposed too great a burden on respondents' free speech rights. It added that protecting those rights was of heightened concern following *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819, 115 S.Ct. 2510, 132 L.Ed.2d 700, because if the University could not discriminate in distributing the funds, students could not be compelled to fund organizations engaging in political and ideological speech. It extended the District Court's order and enjoined the University from requiring students to pay that ***218** portion of the fee used to fund RSO's engaged in political or ideological expression.

Held:

1. The First Amendment permits a public university to charge its students an activity fee used to fund a program to facilitate extracurricular student speech, provided that the program is viewpoint neutral. The University exacts the fee at issue for the sole purpose of facilitating the free and open exchange of ideas by, and among, its students. Objecting students, however, may insist upon certain safeguards with respect to the expressive activities they are required to support. The Court's public forum cases are instructive here by close analogy. Because the complaining students must pay fees to subsidize speech they find objectionable, even offensive, the rights acknowledged in *Abood* and *Keller* are implicated. In those cases, this Court held that a required service fee paid by nonunion employees to a union, *Abood, supra*, at 213, 97 S.Ct. 1782, and fees paid by lawyers who were required to join a state bar association, *Keller, supra*, at 13–14, 110 S.Ct. 2228, could be used to fund speech germane to those organizations' purposes but not to fund the organizations' own political expression. While these precedents identify the protesting students' interests, their germane speech standard is unworkable in the context of student speech at a university and gives insufficient protection both to the objecting students and to the University program itself. Even in the union context, this Court has encountered difficulties in deciding what is germane and what is not. The standard becomes all the more unmanageable in the public university setting, particularly where, as here, the State undertakes to stimulate the whole universe of speech and ideas. To insist upon asking what speech is germane would be contrary to the very goal the University seeks to pursue. The vast extent of permitted expression also underscores the high potential for intrusion on the objecting students' First Amendment rights, for it is all but inevitable that the fees will subsidize speech that some students find objectionable or offensive. A university is free to ****1349** protect those rights by allowing an optional or refund system, but such a system is not a constitutional requirement. If a university determines that its mission is well served if students have the means to engage in dynamic discussion on a broad range of issues, it may impose a mandatory fee to sustain such dialogue. It must provide some protection to its students' First Amendment interests, however. The proper measure, and the principal standard of protection for objecting students, is the requirement of viewpoint neutrality in the allocation of funding support. This obligation was given substance in *Rosenberger v. Rector and Visitors of Univ. of Va., supra*, which concerned a student's right to use an extracurricular speech program already in place. The instant case considers the antecedent question whether a public university may require students ***219** to pay a fee which creates the mechanism for the extracurricular speech in the first instance. The University may sustain the extracurricular dimensions of its programs by using mandatory student fees with viewpoint neutrality as the operational principle. There is symmetry then in the holding here and in *Rosenberger*. Pp. 1353–1356.

2. Because the parties have stipulated that the University's program respects the principle of viewpoint neutrality, the program in its basic

structure must be found consistent with the First Amendment. This decision makes no distinction between campus and off-campus activities; and it ought not be taken to imply that when the University, its agents, employees, or faculty speak, they are subject to the First Amendment analysis which controls in this case. Pp. 1356–1357.

3. While not well developed on the present record, the referendum aspect of the University's program appears to permit RSO funding or defunding by majority vote of the student body. To the extent the referendum substitutes majority determinations for viewpoint neutrality it would undermine the constitutional protection the program requires. P. 1357.

151 F.3d 717, reversed and remanded.

KENNEDY, J., delivered the opinion of the Court, in which REHNQUIST, C.J., and O'CONNOR, SCALIA, THOMAS, and GINSBURG, JJ., joined. SOUTER, J., filed an opinion concurring in the judgment, in which STEVENS and BREYER, JJ., joined, *post,* p. 1357.

Attorneys and Law Firms

Susan K. Ullman, Madison, WI, for petitioners.

Jordan W. Lorence, Fairfax, VA, for respondents.

Opinion

***220** Justice KENNEDY delivered the opinion of the Court.

For the second time in recent years we consider constitutional questions arising from a program designed to facilitate ***221** extracurricular student speech at a public university. Respondents are a group of students at the University of Wisconsin (hereinafter University). They brought a First Amendment challenge to a mandatory student activity fee imposed by petitioner Board of Regents of the University of Wisconsin System and used in part by the University to support student organizations engaging in political or ideological speech. Respondents object to the speech and expression of some of the student organizations. Relying upon our precedents which protect members of unions and bar associations from being required to pay fees used for speech the members find objectionable, both the District Court and the Court of Appeals invalidated the University's student fee program. The University contends that its mandatory student activity fee and the speech which ****1350** it supports are appropriate to further its educational mission.

We reverse. The First Amendment permits a public university to charge its students an activity fee used to fund a program to facilitate extracurricular student speech if the program is viewpoint neutral. We do not sustain, however, the student referendum mechanism of the University's program, which appears to permit the exaction of fees in violation of the viewpoint neutrality principle. As to that aspect of the program, we remand for further proceedings.

I

The University of Wisconsin is a public corporation of the State of Wisconsin. See Wis. Stat. § 36.07(1) (1993–1994). State law defines the University's mission in broad terms: "to develop human resources, to discover and disseminate knowledge, to extend knowledge and its application beyond the boundaries of its campuses and to serve and stimulate society by developing in students heightened intellectual, cultural and humane sensitivities ... and a sense of purpose." ***222** § 36.01(2). Some 30,000 undergraduate students and 10,000 graduate and professional students attend the University's Madison campus, ranking it among the Nation's largest institutions of higher learning. Students come to the renowned University from all 50 States and from 72 foreign countries. Last year marked its 150th anniversary; and to celebrate its distinguished history, the University sponsored a series of research initiatives, campus forums and workshops, historical exhibits, and public lectures, all reaffirming its commitment to explore the universe of knowledge and ideas.

The responsibility for governing the University of Wisconsin System is vested by law with

the board of regents. § 36.09(1). The same law empowers the students to share in aspects of the University's governance. One of those functions is to administer the student activities fee program. By statute the "[s]tudents in consultation with the chancellor and subject to the final confirmation of the board [of regents] shall have the responsibility for the disposition of those student fees which constitute substantial support for campus student activities." § 36.09(5). The students do so, in large measure, through their student government, called the Associated Students of Madison (ASM), and various ASM subcommittees. The program the University maintains to support the extracurricular activities undertaken by many of its student organizations is the subject of the present controversy.

It seems that since its founding the University has required full-time students enrolled at its Madison campus to pay a nonrefundable activity fee. App. 154. For the 1995–1996 academic year, when this suit was commenced, the activity fee amounted to $331.50 per year. The fee is segregated from the University's tuition charge. Once collected, the activity fees are deposited by the University into the accounts of the State of Wisconsin. *Id.*, at 9. The fees are drawn upon by the University to support various campus services and extracurricular student activities. In the University's ***223** view, the activity fees "enhance the educational experience" of its students by "promot [ing] extracurricular activities," "stimulating advocacy and debate on diverse points of view," enabling "participa[tion] in political activity," "promot[ing] student participa[tion] in campus administrative activity," and providing "opportunities to develop social skills," all consistent with the University's mission. *Id.*, at 154–155.

The board of regents classifies the segregated fee into allocable and nonallocable portions. The nonallocable portion approximates 80% of the total fee and covers expenses such as student health services, intramural sports, debt service, and the upkeep and operations of the student union facilities. *Id.*, at 13. Respondents did not challenge the purposes to which the ****1351** University commits the nonallocable portion of the segregated fee. *Id.*, at 37.

The allocable portion of the fee supports extracurricular endeavors pursued by the University's registered student organizations or RSO's. To qualify for RSO status students must organize as a not-for-profit group, limit membership primarily to students, and agree to undertake activities related to student life on campus. *Id.*, at 15. During the 1995–1996 school year, 623 groups had RSO status on the Madison campus. *Id.*, at 255. To name but a few, RSO's included the Future Financial Gurus of America; the International Socialist Organization; the College Democrats; the College Republicans; and the American Civil Liberties Union Campus Chapter. As one would expect, the expressive activities undertaken by RSO's are diverse in range and content, from displaying posters and circulating newsletters throughout the campus, to hosting campus debates and guest speakers, and to what can best be described as political lobbying.

RSO's may obtain a portion of the allocable fees in one of three ways. Most do so by seeking funding from the Student Government Activity Fund (SGAF), administered ***224** by the ASM. SGAF moneys may be issued to support an RSO's operations and events, as well as travel expenses "central to the purpose of the organization." *Id.*, at 18. As an alternative, an RSO can apply for funding from the General Student Services Fund (GSSF), administered through the ASM's finance committee. During the 1995–1996 academic year, 15 RSO's received GSSF funding. These RSO's included a campus tutoring center, the student radio station, a student environmental group, a gay and bisexual student center, a community legal office, an AIDS support network, a campus women's center, and the Wisconsin Student Public Interest Research Group (WISPIRG). *Id.*, at 16–17. The University acknowledges that, in addition to providing campus services (*e.g.*, tutoring and counseling), the GSSF-funded RSO's engage in political and ideological expression. Brief for Petitioner 10.

The GSSF, as well as the SGAF, consists of moneys originating in the allocable portion of the mandatory fee. The parties have stipulated that, with respect to SGAF and GSSF funding, "[t]he process for reviewing and approving allocations for funding is administered in a viewpoint-neutral fashion," *id.*, at 14–15, and that the University does not use the fee program for "advocating a particular point of view." *Id.*, at 39.

A student referendum provides a third means for an RSO to obtain funding. *Id.*, at 16. While the record is sparse on this feature of the University's program, the parties inform us that the student body can vote either to approve or to disapprove an assessment for a particular RSO. One referendum resulted in an allocation of $45,000 to WISPIRG during the 1995–1996 academic year. At oral argument, counsel for the University acknowledged that a referendum could also operate to defund an RSO or to veto a funding decision of the ASM. In October 1996, for example, the student body voted to terminate funding to a national student organization to which the University belonged. *Id.*, at 215. Both parties ***225** confirmed at oral argument that their stipulation regarding the program's viewpoint neutrality does not extend to the referendum process. Tr. of Oral Arg. 19, 29.

With respect to GSSF and SGAF funding, the ASM or its finance committee makes initial funding decisions. App. 14–15. The ASM does so in an open session, and interested students may attend meetings when RSO funding is discussed. *Id.*, at 14. It also appears that the ASM must approve the results of a student referendum. Approval appears *pro forma*, however, as counsel for the University advised us that the student government "voluntarily views th[e] referendum as binding." Tr. of Oral Arg. 15. Once the ASM approves an RSO's funding application, it forwards ****1352** its decision to the chancellor and to the board of regents for their review and approval. App. 18, 19. Approximately 30% of the University's RSO's received funding during the 1995–1996 academic year.

RSO's, as a general rule, do not receive lump-sum cash distributions. Rather, RSO's obtain funding support on a reimbursement basis by submitting receipts or invoices to the University. Guidelines identify expenses appropriate for reimbursement. Permitted expenditures include, in the main, costs for printing, postage, office supplies, and use of University facilities and equipment. Materials printed with student fees must contain a disclaimer that the views expressed are not those of the ASM. The University also reimburses RSO's for fees arising from membership in "other related and non-profit organizations." *Id.*, at 251.

The University's policy establishes purposes for which fees may not be expended. RSO's may not receive reimbursement for "[g]ifts, donations, and contributions," the costs of legal services, or for "[a]ctivities which are politically partisan or religious in nature." *Id.*, at 251–252. (The policy does not give examples of the prohibited expenditures.) A separate policy statement on GSSF funding states that an RSO can receive funding if it "does not have a *primarily* ***226** political orientation (i.e. is not a registered political group)." *Id.*, at 238. The same policy adds that an RSO "shall not use [student fees] for any lobbying purposes." *Ibid.* At one point in their brief respondents suggest that the prohibition against expenditures for "politically partisan" purposes renders the program not viewpoint neutral. Brief for Respondents 31. In view of the fact that both parties entered a stipulation to the contrary at the outset of this litigation, which was again reiterated during oral argument in this Court, we do not consider respondents' challenge to this aspect of the University's program.

The University's Student Organization Handbook has guidelines for regulating the conduct and activities of RSO's. In addition to obligating RSO's to adhere to the fee program's rules and regulations, the guidelines establish procedures authorizing any student to complain to the University that an RSO is in noncompliance. An extensive investigative process is in place to evaluate and remedy violations. The University's policy includes a range of sanctions for noncompliance, including probation, suspension, or termination of RSO status.

One RSO that appears to operate in a manner distinct from others is WISPIRG. For reasons not clear from the record, WISPIRG receives lump-sum cash distributions from the University. University counsel informed us that this distribution reduced the GSSF portion of the fee pool. Tr. of Oral Arg. 15. The full extent of the uses to which WISPIRG puts its funds is unclear. We do know, however, that WISPIRG sponsored on-campus events regarding homelessness and environmental and consumer protection issues. App. 348. It coordinated community food drives and educational programs and spent a portion of its activity fees for the lobbying efforts of its parent organization and for student internships aimed at influencing legislation. *Id.*, at 344, 347.

In March 1996, respondents, each of whom attended or still attend the University's Madison campus, filed suit in the ***227** United States District Court for the Western District of Wisconsin against members of the board of regents. Respondents alleged, *inter alia*, that imposition of the segregated fee violated their rights of free speech, free association, and free exercise under the First Amendment. They contended the University must grant them the choice not to fund those RSO's that engage in political and ideological expression offensive to their personal beliefs. Respondents requested both injunctive and declaratory relief. On cross-motions for summary judgment, the District Court ruled in their favor, declaring the University's ****1353** segregated fee program invalid under *Abood v. Detroit Bd. of Ed.*, 431 U.S. 209, 97 S.Ct. 1782, 52 L.Ed.2d 261 (1977), and *Keller v. State Bar of Cal.*, 496 U.S. 1, 110 S.Ct. 2228, 110 L.Ed.2d 1 (1990). The District Court decided the fee program compelled students "to support political and ideological activity with which they disagree" in violation of respondents' First Amendment rights to freedom of speech and association. App. to Pet for Cert. 98a. The court did not reach respondents' free exercise claim. The District Court's order enjoined the board of regents from using segregated fees to fund any RSO engaging in political or ideological speech.

The United States Court of Appeals for the Seventh Circuit affirmed in part, reversed in part, and vacated in part. *Southworth v. Grebe*, 151 F.3d 717 (1998). As the District Court had done, the Court of Appeals found our compelled speech precedents controlling. After examining the University's fee program under the three-part test outlined in *Lehnert v. Ferris Faculty Assn.*, 500 U.S. 507, 111 S.Ct. 1950, 114 L.Ed.2d 572 (1991), it concluded that the program was not germane to the University's mission, did not further a vital policy of the University, and imposed too much of a burden on respondents' free speech rights. "[L]ike the objecting union members in *Abood*," the Court of Appeals reasoned, the students here have a First Amendment interest in not being compelled to contribute to an organization whose expressive activities conflict with their own personal beliefs. 151 F.3d, at 731. It added that ***228** protecting the objecting students' free speech rights was "of heightened concern" following our decision in *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819, 115 S.Ct. 2510, 132 L.Ed.2d 700 (1995), because "[i]f the university cannot discriminate in the disbursement of funds, it is imperative that students not be compelled to fund organizations which engage in political and ideological activities—that is the only way to protect the individual's rights." 151 F.3d, at 730, n. 11. The Court of Appeals extended the District Court's order and enjoined the board of regents from requiring objecting students to pay that portion of the fee used to fund RSO's engaged in political or ideological expression. *Id.*, at 735.

Three members of the Court of Appeals dissented from the denial of the University's motion for rehearing en banc. In their view, the panel opinion overlooked the "crucial difference between a requirement to pay money to an organization that explicitly aims to subsidize one viewpoint to the exclusion of other viewpoints, as in *Abood* and *Keller*, and a requirement to pay a fee to a group that creates a viewpoint-neutral forum, as is true of the student activity fee here." *Southworth v. Grebe*, 157 F.3d 1124, 1129 (C.A.7 1998) (D. Wood, J., dissenting).

Other courts addressing First Amendment challenges to similar student fee programs have reached conflicting results. Compare *Rounds v.*

Oregon State Bd. of Higher Ed., 166 F.3d 1032, 1038–1040 (C.A.9 1999); *Hays County Guardian v. Supple*, 969 F.2d 111, 123 (C.A.5 1992), cert. denied, 506 U.S. 1087, 113 S.Ct. 1067, 122 L.Ed.2d 371 (1993); *Kania v. Fordham*, 702 F.2d 475, 480 (C.A.4 1983); *Good v. Associated Students of Univ. of Wash.*, 86 Wash.2d 94, 105, 542 P.2d 762, 769 (1975) (en banc), with *Smith v. Regents of Univ. of Cal.*, 4 Cal.4th 843, 862–863, 16 Cal.Rptr.2d 181, 844 P.2d 500, 513–514, cert. denied, 510 U.S. 863, 114 S.Ct. 181, 126 L.Ed.2d 140 (1993). These conflicts, together with the importance of the issue presented, led us to grant certiorari. 526 U.S. 1038, 119 S.Ct. 1332, 143 L.Ed.2d 497 (1999). We reverse the judgment of the Court of Appeals.

***229 II**

It is inevitable that government will adopt and pursue programs and policies within its constitutional powers but which nevertheless are contrary to the profound ****1354** beliefs and sincere convictions of some of its citizens. The government, as a general rule, may support valid programs and policies by taxes or other exactions binding on protesting parties. Within this broader principle it seems inevitable that funds raised by the government will be spent for speech and other expression to advocate and defend its own policies. See, *e.g.*, *Rust v. Sullivan*, 500 U.S. 173, 111 S.Ct. 1759, 114 L.Ed.2d 233 (1991); *Regan v. Taxation With Representation of Wash.*, 461 U.S. 540, 548–549, 103 S.Ct. 1997, 76 L.Ed.2d 129 (1983). The case we decide here, however, does not raise the issue of the government's right, or, to be more specific, the state-controlled University's right, to use its own funds to advance a particular message. The University's whole justification for fostering the challenged expression is that it springs from the initiative of the students, who alone give it purpose and content in the course of their extracurricular endeavors.

The University having disclaimed that the speech is its own, we do not reach the question whether traditional political controls to ensure responsible government action would be sufficient to overcome First Amendment objections and to allow the challenged program under the principle that the government can speak for itself. If the challenged speech here were financed by tuition dollars and the University and its officials were responsible for its content, the case might be evaluated on the premise that the government itself is the speaker. That is not the case before us.

The University of Wisconsin exacts the fee at issue for the sole purpose of facilitating the free and open exchange of ideas by, and among, its students. We conclude the objecting students may insist upon certain safeguards with respect to the expressive activities which they are required to support. Our public forum cases are instructive here by close ***230** analogy. This is true even though the student activities fund is not a public forum in the traditional sense of the term and despite the circumstance that those cases most often involve a demand for access, not a claim to be exempt from supporting speech. See, *e.g.*, *Lamb's Chapel v. Center Moriches Union Free School Dist.*, 508 U.S. 384, 113 S.Ct. 2141, 124 L.Ed.2d 352 (1993); *Widmar v. Vincent*, 454 U.S. 263, 102 S.Ct. 269, 70 L.Ed.2d 440 (1981). The standard of viewpoint neutrality found in the public forum cases provides the standard we find controlling. We decide that the viewpoint neutrality requirement of the University program is in general sufficient to protect the rights of the objecting students. The student referendum aspect of the program for funding speech and expressive activities, however, appears to be inconsistent with the viewpoint neutrality requirement.

We must begin by recognizing that the complaining students are being required to pay fees which are subsidies for speech they find objectionable, even offensive. The *Abood* and *Keller* cases, then, provide the beginning point for our analysis. *Abood v. Detroit Bd. of Ed.*, 431 U.S. 209, 97 S.Ct. 1782, 52 L.Ed.2d 261 (1977); *Keller v. State Bar of Cal.*, 496 U.S. 1, 110 S.Ct. 2228, 110 L.Ed.2d 1 (1990). While those precedents identify the interests of the protesting students, the means of implementing First Amendment protections adopted in those decisions are neither applicable nor workable in the context of extracurricular student speech at a university.

In *Abood*, some nonunion public school teachers challenged an agreement requiring them, as a condition of their employment, to pay a service fee equal in amount to union dues. 431 U.S., at 211–212, 97 S.Ct. 1782. The objecting teachers alleged that the union's use of their fees to engage in political speech violated their freedom of association guaranteed by the First and Fourteenth Amendments. *Id.*, at 213, 97 S.Ct. 1782. The Court agreed and held that any objecting teacher could "prevent **1355 the Union's spending a part of their required service fees to contribute to political candidates and to express political views unrelated to its duties as exclusive bargaining representative." *231 *Id.*, at 234, 97 S.Ct. 1782. The principles outlined in *Abood* provided the foundation for our later decision in *Keller*. There we held that lawyers admitted to practice in California could be required to join a state bar association and to fund activities "germane" to the association's mission of "regulating the legal profession and improving the quality of legal services." 496 U.S., at 13–14, 110 S.Ct. 2228. The lawyers could not, however, be required to fund the bar association's own political expression. *Id.*, at 16, 110 S.Ct. 2228.

The proposition that students who attend the University cannot be required to pay subsidies for the speech of other students without some First Amendment protection follows from the *Abood* and *Keller* cases. Students enroll in public universities to seek fulfillment of their personal aspirations and of their own potential. If the University conditions the opportunity to receive a college education, an opportunity comparable in importance to joining a labor union or bar association, on an agreement to support objectionable, extracurricular expression by other students, the rights acknowledged in *Abood* and *Keller* become implicated. It infringes on the speech and beliefs of the individual to be required, by this mandatory student activity fee program, to pay subsidies for the objectionable speech of others without any recognition of the State's corresponding duty to him or her. Yet recognition must be given as well to the important and substantial purposes of the University, which seeks to facilitate a wide range of speech.

In *Abood* and *Keller*, the constitutional rule took the form of limiting the required subsidy to speech germane to the purposes of the union or bar association. The standard of germane speech as applied to student speech at a university is unworkable, however, and gives insufficient protection both to the objecting students and to the University program itself. Even in the context of a labor union, whose functions are, or so we might have thought, well known and understood by the law and the courts after a long history of government *232 regulation and judicial involvement, we have encountered difficulties in deciding what is germane and what is not. The difficulty manifested itself in our decision in *Lehnert v. Ferris Faculty Assn.*, 500 U.S. 507, 111 S.Ct. 1950, 114 L.Ed.2d 572 (1991), where different Members of the Court reached varying conclusions regarding what expressive activity was or was not germane to the mission of the association. If it is difficult to define germane speech with ease or precision where a union or bar association is the party, the standard becomes all the more unmanageable in the public university setting, particularly where the State undertakes to stimulate the whole universe of speech and ideas.

The speech the University seeks to encourage in the program before us is distinguished not by discernable limits but by its vast, unexplored bounds. To insist upon asking what speech is germane would be contrary to the very goal the University seeks to pursue. It is not for the Court to say what is or is not germane to the ideas to be pursued in an institution of higher learning.

Just as the vast extent of permitted expression makes the test of germane speech inappropriate for intervention, so too does it underscore the high potential for intrusion on the First Amendment rights of the objecting students. It is all but inevitable that the fees will result in subsidies to speech which some students find objectionable and offensive to their personal beliefs. If the standard of germane speech is inapplicable, then, it might be argued the remedy is to allow each student to list those causes which he or she will or will not support. If a university **1356 decided that its students' First Amendment interests were better protected by

some type of optional or refund system it would be free to do so. We decline to impose a system of that sort as a constitutional requirement, however. The restriction could be so disruptive and expensive that the program to support extracurricular speech would be ineffective. The First Amendment does not require the University to put the program at risk.

*233 The University may determine that its mission is well served if students have the means to engage in dynamic discussions of philosophical, religious, scientific, social, and political subjects in their extracurricular campus life outside the lecture hall. If the University reaches this conclusion, it is entitled to impose a mandatory fee to sustain an open dialogue to these ends.

The University must provide some protection to its students' First Amendment interests, however. The proper measure, and the principal standard of protection for objecting students, we conclude, is the requirement of viewpoint neutrality in the allocation of funding support. Viewpoint neutrality was the obligation to which we gave substance in *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819, 115 S.Ct. 2510, 132 L.Ed.2d 700 (1995). There the University of Virginia feared that any association with a student newspaper advancing religious viewpoints would violate the Establishment Clause. We rejected the argument, holding that the school's adherence to a rule of viewpoint neutrality in administering its student fee program would prevent "any mistaken impression that the student newspapers speak for the University." *Id.*, at 841, 115 S.Ct. 2510. While *Rosenberger* was concerned with the rights a student has to use an extracurricular speech program already in place, today's case considers the antecedent question, acknowledged but unresolved in *Rosenberger*: whether a public university may require its students to pay a fee which creates the mechanism for the extracurricular speech in the first instance. When a university requires its students to pay fees to support the extracurricular speech of other students, all in the interest of open discussion, it may not prefer some viewpoints to others. There is symmetry then in our holding here and in *Rosenberger*: Viewpoint neutrality is the justification for requiring the student to pay the fee in the first instance and for ensuring the integrity of the program's operation once the funds have been collected. We conclude that the University of Wisconsin may sustain *234 the extracurricular dimensions of its programs by using mandatory student fees with viewpoint neutrality as the operational principle.

The parties have stipulated that the program the University has developed to stimulate extracurricular student expression respects the principle of viewpoint neutrality. If the stipulation is to continue to control the case, the University's program in its basic structure must be found consistent with the First Amendment.

We make no distinction between campus activities and the off-campus expressive activities of objectionable RSO's. Those activities, respondents tell us, often bear no relationship to the University's reason for imposing the segregated fee in the first instance, to foster vibrant campus debate among students. If the University shares those concerns, it is free to enact viewpoint neutral rules restricting off-campus travel or other expenditures by RSO's, for it may create what is tantamount to a limited public forum if the principles of viewpoint neutrality are respected. Cf. *id.*, at 829–830, 115 S.Ct. 2510. We find no principled way, however, to impose upon the University, as a constitutional matter, a requirement to adopt geographic or spatial restrictions as a condition for RSOs' entitlement to reimbursement. Universities possess significant interests in encouraging students to take advantage of the social, civic, cultural, and religious opportunities **1357 available in surrounding communities and throughout the country. Universities, like all of society, are finding that traditional conceptions of territorial boundaries are difficult to insist upon in an age marked by revolutionary changes in communications, information transfer, and the means of discourse. If the rule of viewpoint neutrality is respected, our holding affords the University latitude to adjust its extracurricular student speech program to accommodate these advances and opportunities.

Our decision ought not to be taken to imply that in other instances the University, its agents or employees, or—of ***235** particular importance—its faculty, are subject to the First Amendment analysis which controls in this case. Where the University speaks, either in its own name through its regents or officers, or in myriad other ways through its diverse faculties, the analysis likely would be altogether different. See *Rust v. Sullivan*, 500 U.S. 173, 111 S.Ct. 1759, 114 L.Ed.2d 233 (1991); *Regan v. Taxation With Representation of Wash.*, 461 U.S. 540, 103 S.Ct. 1997, 76 L.Ed.2d 129 (1983). The Court has not held, or suggested, that when the government speaks the rules we have discussed come into play.

When the government speaks, for instance to promote its own policies or to advance a particular idea, it is, in the end, accountable to the electorate and the political process for its advocacy. If the citizenry objects, newly elected officials later could espouse some different or contrary position. In the instant case, the speech is not that of the University or its agents. It is not, furthermore, speech by an instructor or a professor in the academic context, where principles applicable to government speech would have to be considered. Cf. *Rosenberger*, 515 U.S., at 833, 115 S.Ct. 2510 (discussing the discretion universities possess in deciding matters relating to their educational mission).

III

It remains to discuss the referendum aspect of the University's program. While the record is not well developed on the point, it appears that by majority vote of the student body a given RSO may be funded or defunded. It is unclear to us what protection, if any, there is for viewpoint neutrality in this part of the process. To the extent the referendum substitutes majority determinations for viewpoint neutrality it would undermine the constitutional protection the program requires. The whole theory of viewpoint neutrality is that minority views are treated with the same respect as are majority views. Access to a public forum, for instance, does not depend upon majoritarian consent. That principle is controlling here. A remand is necessary and appropriate to ***236** resolve this point; and the case in all events must be reexamined in light of the principles we have discussed.

The judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinion. In this Court, the parties shall bear their own costs.

It is so ordered.

Justice SOUTER, with whom Justice STEVENS and Justice BREYER join, concurring in the judgment.

The majority today validates the University's student activity fee after recognizing a new category of First Amendment interests and a new standard of viewpoint neutrality protection. I agree that the University's scheme is permissible, but do not believe that the Court should take the occasion to impose a cast-iron viewpoint neutrality requirement to uphold it. See *ante*, at 1356. Instead, I would hold that the First Amendment interest claimed by the student respondents (hereinafter Southworth) here is simply insufficient to merit protection by anything more than the viewpoint neutrality already accorded ****1358** by the University, and I would go no further. [1]

1 I limit my examination of the case solely to the general disbursement scheme; I agree with the majority that the referendum issue was not adequately addressed in the District Court and the Court of Appeals, see *ante*, at 1357, and I would say nothing more on that subject.

The parties have stipulated that the grant scheme is administered on a viewpoint neutral basis, and like the majority I take the case on that assumption. The question before us is thus properly cast not as whether viewpoint neutrality is required, but whether Southworth has a claim to relief from this specific viewpoint neutral scheme. [2] Two sources of law might be considered in answering this question.

2 Under its own reasoning, the majority need not reach the question whether viewpoint neutrality is required to decide this case.

The University program required viewpoint neutrality, and both parties have stipulated that the funds are disbursed accordingly. Stipulation 12, App. 14–15. If viewpoint neutrality is a sufficient condition, the majority could uphold the scheme here on that limited ground without deciding whether it is a necessary one.

***237** The first comprises First Amendment and related cases grouped under the umbrella of academic freedom.[3] Such law might be implicated by the University's proffered rationale, that the grant scheme funded by the student activity fee is an integral element in the discharge of its educational mission. App. 253 (excerpt from Dean of Students Office Student Organization Handbook noting that the activities of student groups constitute a " 'second curriculum' "); *id.*, at 41, 42–44 (statement of Associate Dean of Students of the UW–Madison noting academic importance of funding scheme); see also *ante*, at 1356. Our understanding of academic freedom has included not merely liberty from restraints on thought, expression, and association in the academy, but also the idea that universities and schools should have the freedom to make decisions about how and what to teach. In *Regents of Univ. of Mich. v. Ewing*, 474 U.S. 214, 106 S.Ct. 507, 88 L.Ed.2d 523 (1985), we recognized these related conceptions: "Academic freedom thrives not only on the independent and uninhibited exchange of ideas among teachers and students, but also, and somewhat inconsistently, on autonomous decisionmaking by the academy itself." *Id.*, at 226, n. 12, 106 S.Ct. 507 (citations omitted). Some of the opinions in our books emphasize broad conceptions of academic freedom that if accepted by the Court might seem to clothe the University with an immunity to any challenge to regulations made or obligations imposed in the discharge of its educational mission. So, in *Sweezy v. New Hampshire*, 354 U.S. 234, 77 S.Ct. 1203, 1 L.Ed.2d 1311 (1957), Justice Frankfurter, concurring in the result and joined by Justice Harlan, explained the ***238** importance of a university's ability to define its own mission by quoting from a statement on the open universities in South Africa:

3 We have long recognized the constitutional importance of academic freedom. See *Wieman v. Updegraff*, 344 U.S. 183, 195, 73 S.Ct. 215, 97 L.Ed. 216 (1952) (Frankfurter, J., concurring); *Sweezy v. New Hampshire*, 354 U.S. 234, 250, 77 S.Ct. 1203, 1 L.Ed.2d 1311 (1957) (plurality opinion); *Shelton v. Tucker*, 364 U.S. 479, 487, 81 S.Ct. 247, 5 L.Ed.2d 231 (1960); *Keyishian v. Board of Regents of Univ. of State of N.Y.*, 385 U.S. 589, 603, 87 S.Ct. 675, 17 L.Ed.2d 629 (1967).

" 'It is the business of a university to provide that atmosphere which is most conducive to speculation, experiment and creation. It is an atmosphere in which there prevail "the four essential freedoms" of a university—to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study.' " *Id.*, at 263, 77 S.Ct. 1203 (citations omitted).

These broad statements on academic freedom do not dispose of the case here, however. *Ewing* addressed not the relationship ****1359** between academic freedom and First Amendment burdens imposed by a university, but a due process challenge to a university's academic decisions, while as to them the case stopped short of recognizing absolute autonomy. *Ewing, supra*, at 226, and n. 12, 106 S.Ct. 507. And Justice Frankfurter's discussion in *Sweezy*, though not rejected, was not adopted by the full Court, *Sweezy, supra*, at 263, 77 S.Ct. 1203 (opinion concurring in result). Our other cases on academic freedom thus far have dealt with more limited subjects, and do not compel the conclusion that the objecting university student is without a First Amendment claim here.[4] While we have spoken in terms of a wide protection for the academic freedom ***239** and autonomy that bars legislatures (and courts) from imposing conditions on the spectrum of subjects taught and viewpoints expressed in college teaching (as the majority recognizes, *ante*, at 1355–1356), we have never held that universities lie entirely beyond the reach of students' First Amendment rights.[5] Thus our prior cases do not go so far as to control the result in this one, and going beyond those cases would be out of order, simply because the University has not litigated on grounds of academic freedom. As

to that freedom and university autonomy, then, it is enough to say that protecting a university's discretion to shape its educational mission may prove to be an important consideration in First Amendment analysis of objections to student fees. *Sweezy, supra,* at 262–264, 77 S.Ct. 1203 (Frankfurter, J., concurring in result); *Ewing, supra,* at 226, n. 12, 106 S.Ct. 507.

4 Our university cases have dealt with restrictions imposed from outside the academy on individual teachers' speech or associations. *id.*, at 591–592, 87 S.Ct. 675; *Shelton v. Tucker, supra,* at 487, 81 S.Ct. 247; *Sweezy v. New Hampshire, supra,* at 236, 77 S.Ct. 1203; *Wieman v. Updegraff, supra,* at 184–185, 73 S.Ct. 215, and cases dealing with the right of teaching institutions to limit expressive freedom of students have been confined to high schools, *Hazelwood School Dist. v. Kuhlmeier,* 484 U.S. 260, 262, 108 S.Ct. 562, 98 L.Ed.2d 592 (1988); *Bethel School Dist. No. 403 v. Fraser,* 478 U.S. 675, 677, 106 S.Ct. 3159, 92 L.Ed.2d 549 (1986); *Tinker v. Des Moines Independent Community School Dist.,* 393 U.S. 503, 504, 89 S.Ct. 733, 21 L.Ed.2d 731 (1969), whose students and their schools' relation to them are different and at least arguably distinguishable from their counterparts in college education.

5 Indeed, acceptance of the most general statement of academic freedom (as in the South African manifesto quoted by Justice Frankfurter) might be thought even to sanction student speech codes in public universities.

The second avenue for addressing Southworth's claim to a pro rata refund or the total abolition of the student activity fee is to see how closely the circumstances here resemble instances of governmental speech mandates found to require relief. As a threshold matter, it is plain that this case falls far afield of those involving compelled or controlled speech, apart from subsidy schemes. Indirectly transmitting a fraction of a student activity fee to an organization with an offensive message is in no sense equivalent to restricting or modifying the message a student wishes to express. Cf. *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston,* 515 U.S. 557, 572–574, 115 S.Ct. 2338, 132 L.Ed.2d 487 (1995). Nor does it require an individual to bear an offensive statement personally, as in *Wooley v. Maynard,* 430 U.S. 705, 707, 97 S.Ct. 1428, 51 L.Ed.2d 752 (1977), let alone to affirm a moral or political commitment, as in *West Virginia Bd. of Ed. v. Barnette,* 319 U.S. 624, 626–629, 63 S.Ct. 1178, 87 L.Ed. 1628 (1943). In each of these cases, the government was imposing far more directly and offensively on an objecting individual than collecting ***240** the fee that indirectly funds the jumble of other speakers' messages in this case.

Next, I agree with the majority that the *Abood* and *Keller* line of cases does not control the remedy here, the situation of the students being significantly different ****1360** from that of union or bar association members. *Ante,* at 1354–1355; see *Abood v. Detroit Bd. of Ed.,* 431 U.S. 209, 97 S.Ct. 1782, 52 L.Ed.2d 261 (1977); *Keller v. State Bar of Cal.,* 496 U.S. 1, 110 S.Ct. 2228, 110 L.Ed.2d 1 (1990). First, the relationship between the fee payer and the ultimately objectionable expression is far more attenuated. In the union and bar association cases, an individual was required to join or at least drop money in the coffers of the very organization promoting messages subject to objection. *Abood, supra,* at 211–213, 215, 97 S.Ct. 1782; *Keller, supra,* at 13–14, 110 S.Ct. 2228. The connection between the forced contributor and the ultimate message was as direct as the unmediated contribution to the organization doing the speaking. The student contributor, however, has to fund only a distributing agency having itself no social, political, or ideological character and itself engaging (as all parties agree) in no expression of any distinct message.[6] App. 14–15, 34, 39, 41. Indeed, the disbursements, varying from year to year, are as likely as not to fund an organization that disputes the very message an individual student finds exceptionable. *Id.,* at 39. Thus, the clear connection between fee payer and offensive speech that loomed large in our decisions in the union and bar cases is simply not evident here.

6 I have noted in other contexts that the act of funding itself may have a communicative element, see *Rosenberger v. Rector and Visitors of Univ. of Va.,* 515 U.S. 819, 892–893, n.

11, 115 S.Ct. 2510, 132 L.Ed.2d 700 (1995) (dissenting opinion); *National Endowment for Arts v. Finley*, 524 U.S. 569, 611, n. 6, 118 S.Ct. 2168, 141 L.Ed.2d 500 (1998) (dissenting opinion), but there is no allegation that such general expression is objectionable here, nor is it clear that such a claim necessarily raises substantial First Amendment concerns in light of the speech promoting and educational aspects of this expression. Cf. *Buckley v. Valeo*, 424 U.S. 1, 92–93, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976) *(per curiam)*. See also *infra*, this page and 1361.

Second, Southworth's objection has less force than it might otherwise carry because the challenged fees support a government ***241** program that aims to broaden public discourse. As I noted in *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819, 873–874, and n. 3, 889–891, 115 S.Ct. 2510, 132 L.Ed.2d 700 (1995) (dissenting opinion), the university fee at issue is a tax.[7] The state university compels it; it is paid into state accounts; and it is disbursed under the ultimate authority of the State. Wis. Stat. § 36.09(5) (1993–1994); App. 9, 18–19. Although the facts here may not fit neatly under our holdings on government speech (and the University has expressly renounced any such claim),[8] *ante*, at 1353–1354, our cases do suggest that under the First Amendment the government may properly use its tax revenue to promote general discourse.[9] In *Buckley v. Valeo*, 424 U.S. 1, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976) *(per curiam)*, we rejected a challenge to a congressional program providing viewpoint neutral subsidies to all Presidential candidates based in part on this reasoning:

7 True, one does not have to go to college, but one does not have to own real estate or receive a dividend.

8 Unlike the majority, I would not hold that the mere fact that the University disclaims speech as its own expression takes it out of the scope of our jurisprudence on government directed speech. We have never generally questioned a university's "spacious discretion" to allocate public funds. See *Rosenberger*, *supra*, at 892, 115 S.Ct. 2510 (SOUTER, J., dissenting) (citing *Rust v. Sullivan*, 500 U.S. 173, 111 S.Ct. 1759, 114 L.Ed.2d 233 (1991), and *Regan v. Taxation With Representation of Wash.*, 461 U.S. 540, 103 S.Ct. 1997, 76 L.Ed.2d 129 (1983)).

9 Of course, I believe that even a government program that promotes a broad range of expression is subject to the specific prohibition on government funding to promote religion, imposed by the Establishment Clause. See *Rosenberger*, *supra*, at 882, 115 S.Ct. 2510 (SOUTER, J., dissenting).

"[The program] is a congressional effort, not to abridge, restrict, or censor speech, but rather to use public money to facilitate and enlarge public discussion ****1361** and participation in the electoral process, goals vital to a self-governing people. Thus, [the program] furthers, not abridges, pertinent First Amendment values." *Id.*, at 92–93, 96 S.Ct. 612 (footnote omitted).

***242** And we have recognized the same principle outside of the sphere of government spending as well. In *Prune Yard Shopping Center v. Robins*, 447 U.S. 74, 100 S.Ct. 2035, 64 L.Ed.2d 741 (1980), we rejected a shopping mall owner's blanket claim that "a private property owner has a First Amendment right not to be forced by the State to use his property as a forum for the speech of others." *Id.*, at 85, 100 S.Ct. 2035 (footnote omitted). We then upheld the right of individuals to exercise state-protected rights of expression on a shopping mall owner's property, noting among other things that there was no danger that such a requirement would " 'dampe[n] the vigor and limi[t] the variety of public debate.' " *Id.*, at 87, 88, 100 S.Ct. 2035 (quoting *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241, 257, 94 S.Ct. 2831, 41 L.Ed.2d 730 (1974) (alteration in original)). The same consideration goes against the fee payer's speech objection to the scheme here.

Third, our prior compelled speech and compelled funding cases are distinguishable on the basis of the legitimacy of governmental interest. No one disputes the University's assertion that some educational value is derived from the activities supported by the fee, *ante*, at 1355–1356; *supra*, at 1358, whereas there was no governmental interest in mandating union or bar association support

beyond supporting the collective bargaining and professional regulatory functions of those organizations, see *Abood, supra,* at 223–224, 97 S.Ct. 1782; *Keller, supra,* at 13–14, 110 S.Ct. 2228. Nor was there any legitimate governmental interest in requiring the publication or affirmation of propositions with which the bearer or speaker did not agree. [10] *Wooley,* 430 U.S., at 716–717, 97 S.Ct. 1428; *Barnette,* 319 U.S., at 640–642, 63 S.Ct. 1178.

10 The legitimacy of the governmental objective here distinguishes the case in my view from one brought by a university student who objected to supporting religious evangelism. See *Rosenberger,* 515 U.S., at 868–871, 115 S.Ct. 2510 (SOUTER, J., dissenting).

Finally, the weakness of Southworth's claim is underscored by its setting within a university, whose students are inevitably required to support the expression of personally ***243** offensive viewpoints in ways that cannot be thought constitutionally objectionable unless one is prepared to deny the University its choice over what to teach. No one disputes that some fraction of students' tuition payments may be used for course offerings that are ideologically offensive to some students, and for paying professors who say things in the university forum that are radically at odds with the politics of particular students. Least of all does anyone claim that the University is somehow required to offer a spectrum of courses to satisfy a viewpoint neutrality requirement. See *Rosenberger, supra,* at 892–893, and nn. 11–12, 115 S.Ct. 2510 (SOUTER, J., dissenting). The University need not provide junior years abroad in North Korea as well as France, instruct in the theory of plutocracy as well as democracy, or teach Nietzsche as well as St. Thomas. Since uses of tuition payments (not optional for anyone who wishes to stay in college) may fund offensive speech far more obviously than the student activity fee does, it is difficult to see how the activity fee could present a stronger argument for a refund.

In sum, I see no basis to provide relief from the scheme being administered, would go no further, and respectfully concur in the judgment.

All Citations

529 U.S. 217, 120 S.Ct. 1346, 146 L.Ed.2d 193, 142 Ed. Law Rep. 624, 00 Cal. Daily Op. Serv. 2265, 2000 Daily Journal D.A.R. 3049, 13 Fla. L. Weekly Fed. S 197

End of Document